86-248

No.

Supreme Court, U.S.
FILED
AUG 15 1986
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

JAMES JACKSON,

Appellant,

v.

UNITED STATES POSTAL SERVICE,

Agency.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

GERALD A. GOLDMAN, ESQ.
GOLDMAN AND MARCUS
19 South LaSalle Street
Suite 300
Chicago, IL 60603
(312) 332-6733
Counsel for Appellant

QUESTION PRESENTED

Whether the decision of the United States Court of Appeals for the Federal Court affirming the decision of the Merit Systems Protection Board allowing the United States Postal Service to arbitrarily and capriciously discharge an employee pursuant to a customer complaint when said complaint arises out of the employee obeying proper postal procedure and deprives the employee of due process of law.

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
PARTIES	1
OPINIONS BELOW	2
JURISDICTION	2
STATUTE INVOLVED	3
STATEMENT OF THE CASE	4
ARGUMENT	8
CONCLUSION	13
APPENDIX	1a 22a

IN THE

SUPREME COURT OF THE UNITED STATES

No.

JAMES JACKSON,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

The petitioner, JAMES JACKSON, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on May 19,1986.

PARTIES

The parties to the proceedings in the Court whose judgment is sought to be reviewed are contained in the caption of the case in this Court.

OPINIONS BELOW

Jackson vs. United States Postal Service, No. 86-598 (Fed. Cir., May 19, 1986); Jackson vs. United States Postal Service, No. CH07528510344 (Merit Systems Protection Board, July 16, 1985).

JURISDICTION

This case is an appeal of the judgment entered on May 19,1986, by the United States Court of Appeals for the Federal Circuit. Jackson vs. United States Postal Service, No. 86-598 (May 19, 1986). Jurisdiction in this Court is conferred by 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

In any case filed in the United States Court of Appeals for the Federal Circuit, the Court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be —

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;

(2) obtained without procedures required by law, rule, or regulation having been followed; or

(3) unsupported by substantial evidence. . .

5 U.S.C. 7703(c)

Postal Manual designated M-41 Manual, §321.4, §337.1-337.3 inclusive, §337.6 and §345 provide for the circumstances upon which mail receptacles are inadequate for delivery of important or valuable mail.

STATEMENT OF THE CASE

This case comes before this Court on a Petition for a Writ of Certiorari regarding the decision of the United States Court of Appeals for the Federal Circuit in the case of Jackson vs. United States Postal Service, No. 86-598 (Fed. Cir., May 19, 1986). The Appellate Court upheld the findings of the Merit Systems Protection Board that the United States Postal Service had not violated the rights of the Petitioner when it discharged him.

The Appellant, MR. JAMES JACKSON, has been a letter carrier with the U.S. POSTAL SERVICE (hereinafter referred to as U.S.P.S. or AGENCY) since June 4, 1971. R 5. MR. JACKSON was assigned to Postal Route 24 for approximately four (4) years.

The U.S.P.S. removed MR. JACKSON from his job in March of 1985, allegedly because he deliberately

delayed the delivery of a medical aid card to Ms. Tanya Hurt. Ms. Hurt was a postal patron, and she lived in an apartment building at 143 South Central on MR. JACKSON's route for approximately two and one-half (2-1/2) years. R 61. This card was sent to Ms. Hurt every month, and MR. JACKSON was accused of delaying the delivery of three (3) of these cards.

Ms. Hurt lived in an apartment building at 143 South Central in Chicago. R 61. All of the mailboxes in this building were broken, unlocked and unsafe mail receptacles. R 13, 25, 74, 91. Postal procedure dictates that a medical aid card is an important and valuable piece of mail, and this card should not be left in an unsafe mailbox. R 74, 83. Proper postal procedure, therefore, requires that if the postal patron is not home when the carrier comes by, important and valuable mail such as a medical card should then be returned to a check box in the station for redelivery the next day. R 85-86, 92-93, 106-07.

MR. JACKSON had testified at the hearing that he rarely found Ms. Hurt at home. R 105. Since the card was too valuable to be left in the unsafe mailbox, MR. JACKSON was unable to deliver the medical card when Ms. Hurt was not home. R 105. Other carriers who filled in for MR. JACKSON on his days off were also unable to deliver this medical aid card because they could not find Ms. Hurt at home either. R 51-52, 54, 93, 99.

The U.S.P.S., however, accused MR. JACKSON of deliberately delaying the delivery of the medical aid card and removed MR. JACKSON from the Postal Service.

This Petitioner was discharged from the UNITED STATES POSTAL SERVICE in March of 1985, and the Petitioner then filed an appeal with the Merit Systems Protection Board. A hearing was conducted on May 30, 1985, and the Merit Systems Protection Board on July 16, 1985, affirmed the UNITED STATES POSTAL SERVICE's decision to discharge this Petitioner.

The Petitioner appealed the decision of the Merit Systems Protection Board to the United States Court of Appeals for the Federal Circuit. Jackson vs. United States Postal Service, No. 86-598 (Fed. Cir., May 19, 1986). The United States Court of Appeals affirmed the decision of the Merit Systems Protection Board.

ARGUMENT

The Petitioner requests the Honorable Justices of this Court to grant this Petition for a Writ of Certiorari because the decision of the United States Court of Appeals for the Federal Circuit in Jackson vs. United States Postal Service sanctions such a departure from the usual course of proceedings that this Court should exercise its supervisory powers.

The standard to be used by the United States Court of Appeals for the Federal Circuit when reviewing an adverse agency action requires the Court to set aside an agency action, finding or conclusion found to be:

1. arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

2. obtained without procedures required by law, rule or regulation having been followed; or

3. unsupported by substantial evidence. 5 U.S.C., §7703(c).

Postal Manual designated M-41 at §321.4, §337.1-337.3 inclusive, §337.6 and §345 provide for the carrier's responsibility with respect to important and valuable mail when the mail receptacles are not in accordance with postal standards. Petitioner followed these procedures as set down by the Postal Manual with respect to the delivery of the mail in question.

Postal procedure dictates that important or valuable mail should not be left in an unlocked or unsafe mailbox. R 74, 94. Postal Supervisor Vondrass testified that a medical card was an important and valuable piece of mail which should not be left in an unsafe mailbox. R 74, 83. The testimony is also clear that the mailboxes at Ms. Hurt's building were unlocked, unsafe and did not even have names on the boxes. R 13, 25, 74, 91.

When MR. JACKSON attempted to deliver the medical card on the two (2) occasions in question, he

called up for Ms. Hurt several times, but Ms. Hurt did not answer and did not come down to receive her medical aid card. R 112, 113. Since the mailboxes were not safe, MR. JACKSON could not have left the medical card there in view of postal procedure. R 74,83, 94.

The fact that Ms. Hurt specifically requested MR. JACKSON to leave the card in the box even though she was not home would not allow MR. JACKSON to ignore established postal procedure. Margaret Brown also testified that even if a patron had requested her to leave a medical aid card in an unsafe mailbox even if the patron was not at home, she would still not leave the card in view of postal procedure.

Although the AGENCY was aware of Ms. Hurt's request to leave the medical card, they did not instruct MR. JACKSON to follow Ms. Hurt's request, and they never ordered him to leave the card there. R 84, 118. In fact, MR. JACKSON specifically asked his supervisor, Mr. Woods, for instructions when Ms. Hurt telephoned

him on December 4th, but the supervisor would not give him an answer. R 113. In the absence of any order from the U.S.P.S., MR. JACKSON followed proper procedures in not leaving the medical aid card in Ms. Hurt's mailbox notwithstanding her request.

It was uncontroverted that a medical aid card should not be left in an unsafe mailbox [R 74, 83], and witness, Pfefer, stated that the mailboxes at 143 South Central were not safe. R 13. Ms. Hurt had stated on one occasion that she was not home the majority of the time [69-70], and Ms. Brown testified that she was never able to deliver a medical aid card to her because Ms. Hurt was never at home. R 93, 99.

MR. JACKSON had explained at the hearing that he would not leave the medical aid card in Ms. Hurt's mailbox when she was not home because the medical card was important mail, and the mailbox was unsafe. R 104-07. The Hearing Examiner, however, found this explanation unpersuasive because he claimed that there

was testimony that mail had been left in unsafe mailboxes or in front of a building with other postal patrons. ¶3 of Opinion, Exhibit "A". This statement, however, indicates that the Hearing Examiner did not understand the issues in the case.

No one testified that MR. JACKSON left medical aid cards or other valuable mail at an unsafe mailbox for his other postal patrons. There was only a prohibition against leaving valuable or important mail in an unsafe mailbox. R 74, 83, 94. There was nothing wrong with leaving any other mail in these mailboxes. Yet, it was this other nonvaluable mail which the Hearing Examiner relied on to call MR. JACKSON's arguments "unpersuasive". The Hearing Examiner, therefore, improperly used MR. JACKSON'S procedure with general mail as a means to justify his decision to affirm MR. JACKSON's discharge and dispense with MR. JACKSON's defenses. The Hearing Examiner failed to make the important distinction between valuable mail and general mail, all to the great prejudice of MR. JACKSON.

CONCLUSION

To allow the decision of the Appellate Court affirming the proceedings before the Merit Systems Protection Board to stand would sanction an Agency's discharge of an employee when the employee is following the rules and regulations set down by the employer.

Respectfully submitted

Goldman & Marcus

INDEX TO APPENDIX

	PAGE
Opinion of the Merit Systems Protection Board	1a
Opinion of the United States Court of Appeals	22a

APPENDIX

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CHICAGO REGIONAL OFFICE

IN THE MATTER OF:	)	
	)	Case Number: CH07528510344
James Jackson,	)	
Appellant	)	
	)	
v.	)	Date: July 16, 1985
	)	
United States Postal Service,	)	
Agency	)	Douglas G. White
	)	Presiding Official
	)	
	)	

INTRODUCTION

By petition filed on March 25, 1985, the appellant appealed from the action of the United States Postal Service, Austin Station, Chicago, Illinois, removing him from his position of Letter Carrier, PS-5, effective

March 22, 1985. The appellant's removal was based on his alleged delay in delivering mail.

The appeal falls within the Board's appellate jurisdiction. See 5 U.S.C.A. 7701(a), 7511(a)(1)(B), 7512, 7513 (West 1980); 5 C.F.R. 752.401(b)(2), .405(A) (1984). A hearing was conducted on May 30, 1985. For the reasons set forth below, the agency's action is affirmed.

ANALYSIS AND FINDINGS

The agency stated in its February 1, 1985 proposal notice that the appellant improperly delayed delivery of three of Ms. Tanya Hurt's monthly medical assistance (aid) cards from the Illinois Department of Public Aid. Ms. Hurt's mailing address is 143 S. Central and the appellant is the regular Letter Carrier for that address. All the mailboxes along the appellant's route are in poor condition (Presiding Official Exhibits 1-5).

In October of 1984, the Austin Station received a written complaint from Ms. Hurt concerning delay in delivery of her monthly medical aid card. Ms. Hurt emphasized that she needed the monthly card promptly because her six-month old son suffers from cerebral palsy. Ms. Hurt explained that she did not have trouble with delivery of her medical aid card until she refused to see the appellant socially (Agency File at tab 2). At the adverse action hearing, Ms. Hurt testified that in September of 1984 the appellant came to her apartment and asked her to spend a weekend with him in Wisconsin. She further testified that she rejected the offer. During the hearing, the appellant denied ever asking to see Ms. Hurt socially.

Postal Inspector Pfefer testified that in November 1984 he was assigned to investigate Ms. Hurt's complaint. Postal Inspector Pfefer further testified that he asked the Supervisor of Delivery, Mr. Sheldon Gorovsky, to examine the mail assigned to the

appellant. Postal Inspector Pfefer explained that Mr. Gorovsky reported to him that he observed Ms. Hurt's November medical aid card letter with the following notes written on it: "10-27-84, 11-1-84" and the words "Don't leave this." Postal Inspector Pfefer further explained that on the morning of November 8, 1984, Mr. Gorovsky reported to him that he placed the Hurt letter in the appellant's work area for delivery that day. Later, Mr. Gorovsky discovered the letter in a locked "check box" for undeliverable valuable mail. Postal Inspector Pfefer stated that the next day he and Mr. Gorovsky watched the appellant from a lookout gallery: at approximately 8:45 a.m. they observed the appellant place a single letter in the "check box" before going out to deliver mail. Fifteen minutes later, Mr. Gorovsky again discovered the Hurt letter in the "check box". Postal Inspector Pfefer further stated that on the morning of November 10, 1984 Mr Gorovsky told him that he had left the appellant a note stating that Ms.

Hurt had requested delivery of the November medical aid card that day. Postal Inspector Pfefer testified that Ms. Hurt called him on November 11, 1984 because she had not yet received the November medical aid card and she needed it to take her son to the hospital. Postal Inspector Pfefer went to the Austin Station on November 12, 1984 holiday to retrieve the Hurt letter and then personally deliver it.

Postal Inspector Pfefer testified that on the morning of December 4, 1984 he listened to a telephone conversation between the appellant and Ms. Hurt during which he heard the appellant promise to leave the December medical aid card in her apartment building mailbox. Postal Inspector Pfefer explained that he followed the appellant and observed the appellant place mail in one of the mailboxes at Ms. Hurt's address and leave the apartment lobby. Postal Inspector Pfefer also explained that he observed Ms. Hurt enter the lobby and search the mailbox for her December medical aid card.

Postal Inspector Pfefer then observed Ms Hurt follow the appellant into the street and ask for her December medical aid card. Postal Inspector Pfefer also observed the appellant giving the December medical aid card to Ms. Hurt.

Postal inspector Pfefer testified that on December 27, 1984, he received all the Illinois Department of Public Aid letters for the Austin Station. Postal Inspector Pfefer further testified that he counted 42 January medical aid cards as deliverable along the appellant's route. Postal Inspector Pfefer also testified that he personally delivered Ms. Hurt's January medical aid card after having made a facsimile of that letter to include with mail assigned to the appellant. Postal Inspector Pfefer explained that the next day the appellant was followed by a team of Postal Inspectors. The team reported to Postal Inspector Pfefer that they observed the appellant place mail in slots, holes in walls, and mailboxes. The team also reported that they

observed the appellant give mail by hand to a postal patron and leave mail unattended on the steps of a building. Station Manager W.F. Vondras testified that at the end of the day he examined the mail assigned to the appellant and discovered the Hurt facsimile letter erroneously filed for the street address 5550 West Quincy.

Mr. Vondras testified that the Austin Station supervisors continued to watch the mail assinged to the appellant. He stated that on December 28, 1984, he found the Hurt facsimile letter erroneously filed for the street address of 5550 W. Quincy. On December 31, 1984 he found the facsimile letter erroneously filed for the street address 117-15 S. Central. On January 2, 1985 he found the Hurt facsimile letter erroneously filed for the street address of 117-15 S. Central. On January 7, 1985 he found the Hurt facsimile letter erroneously filed for the street address of 117-15 S. Central. Mr. Vondras explained that filing the Hurt

letter at 117-15 S. Central or 5550 West Quincy would cause a one day delay in delivery because the carrier would not notice the error until after the 143 Central mail had already been delivered.

In response to the charge, the appellant testified that he received no complaints from any other patrons about his delivery of mail. The appellant further testified that on occasion he delayed delivery in buildings with unsafe mailboxes when he could not personally deliver important mail. He emphasized that on occasion he would call out names to make personal deliveries before returning valuable mail, such as medical aid cards, to the post office. The appellant added that some delays may have occurred because he did not work every day of each month and because he missed five days of work in January 1985 due to jury duty. The appellant, however, did not explain how his absence or the use of substitute carriers caused delays in delivery of Ms. Hurt's medical aid cards.

The agency presented the results of a comprehensive investigation of extended delays in delivery of Ms. Hurt's medical aid cards. The investigation was supported by the detailed and consistent hearing testimony of Postal Inspector Pfefer and Mr. Vondras that the appellant, on many separate occasions over a three month period, delayed delivery of three of Ms. Hurt's medical aid cards. Ms Hurt's claim that the appellant was retaliating against her because she refused to see him socially is persuasive and consistent with the appellant's subsequent behavior.

On the other hand, I find that the appellant's explanation for the delay in delivery of Ms. Hurt's medical aid cards is not persuasive. The fact that there were no other complaints against the appellant is irrelevant to whether or not the appellant delayed Ms. Hurt's mail. The appellant's testimony relating to his concern about delivering valuable mail to patrons along his route is inconsistent with credible testimony

concerning his conduct on December 27, 1984 when the appellant was observed leaving mail in unsafe mailboxes and in front of a building. The appellant's concern about his days off is misplaced because there were many instances when the appellant was actually observed delaying Ms. Hurt's mail. In addition, the evidence shows that Ms. Hurt's mail was erroneously filed on days the appellant worked. Therefore, I find that the agency met its burden of supporting the reason for the appellant's removal by preponderant evidence and the charge is sustained. See 5 U.S.C.A. 7701(c)(1)(B) (West 1980); 5 C.F.R. 1201.56(a)(1)(ii) (1985).

Even though the adverse action is supported by a preponderance of the evidence, an agency may discipline an employee only for such cause as will promote the efficiency of the service. See 5 U.S.C.A. 7513(a) (West 1980); 5 C.F.R. 752.403(a) (1984). A nexus or connection must be shown between the reason for the appellant's removal and his ability to perform his duties

satisfactorily or the agency's ability to accomplish its mission. See Young v. Hampton, 568 F.2d 1253 (7th Cir. 1977).

In this case, nexus is clearly shown. The appellant, as a City Carrier, had a fiduciary duty to deliver mail (Agency File at tab 3). Delay or destruction of mail is so serious that it constitutes a crime. 18 U.S.C.A. 1703 (West Supp. 1983). The Austin Station Manager, Mr. Vondras, testified that the appellant had a satisfactory work record, but that he could no longer trust the appellant. He added that many postal patrons in the Austin area, including Ms. Hurt, are dependent on the mail for receipt of government assistance program benefits. Therefore, I find that the record establishes a nexus between the reason for the appellant's removal and the efficiency of the service.

Finally, I will consider whether the appellant is entitled to have his removal mitigated to a lesser penalty in accordance with the Board's holding in

Douglas v. Veterans Administration, 5 MSPB 313 (1981). Therein the Board stated that in selecting penalties an agency must "strike a responsible balance within the tolerable limits of reasonableness." Id. at 333. In this case, the seriousness of the appellant's misconduct is aggravated by its repeated nature. The appellant delayed delivery of medical aid cards for three consecutive months. These cards were vital for the medical treatment of a child suffering from cerebral palsy. The Board has found that the penalty of removal for deliberate curtailing or concealing mail is not unreasonable. Banks v. United States Postal Service, 8 MSPB 124 (1981). The appellant emphasized his satisfactory work record, and his fourteen years of service with the agency. The mitigating factors in the appellant's favor do not overcome the serious and repeated nature of the appellant's misconduct. Therefore, I find that the appellant's removal was within the tolerable limits of reasonableness.

DECISION

The removal is affirmed.

This decision is an initial decision and will become a final decision of the Merit Systems Protection Board on August 20, 1985 unless a petition for review is filed with the Board or the Board reopens the case on its own motion.

ADMINISTRATIVE AND JUDICIAL REVIEW

Any party to this appeal, the Director of the Office of Personnel Management, and the Special Counsel may file a petition for review of this decision with the Merit Systems Protection Board. An original and two copies of any petition for review must be filed with the Clerk of the Board for the Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419 no later than the date cited above.

The petition must identify specifically the exception taken to this decision, cite the basis for the exception, and refer to applicable laws, rules, or regulations. The Board may grant a petition for review when a party submits written argument and supporting documentation which tend to show that:

(1) New and material evidence is available that, despite due diligence, was not available when the record was closed; or

(2) The decision of the presiding official is based on an erroneous interpretation of statute or regulation.

Pursuant to 5 U.S.C. Section 7703(b)(1), the appellant has the right to seek judicial review of the Board's final decision on this appeal. (The foregoing statement is not to be interpreted as a basis for

establishing court jurisdiction where such jurisdiction does not otherwise exist.) A petition requesting such review must be filed with the U.S. Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D.C. 20439. Such a petition may not be filed while the case is pending before the Board. To be timely, the petition for judicial review must be received by the court within 30 days of the final Board decision.

For the Board:

Douglas G. White
Presiding Official

NOTE: This opinion will not be published in a printed volume because it does not add significantly to the body of law and is not of widespread legal interest. It is a public record. It is not citable as precedent. The decision will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

JAMES JACKSON,	)	
	)	
Petitioner,	)	Appeal No. 86-598
	)	
v.	)	MSPB Docket No.
	)	CH07528510344
UNITED STATES POSTAL SERVICE,	)	
	)	
Respondent.	)	

DECIDED: May 19, 1986

Before DAVIS, Circuit Judge, COWEN, Senior Circuit Judge, and NEWMAN, Circuit Judge.

COWEN, Senior Circuit Judge.

DECISION

The decision of the Merit Systems Protection Board (MSPB or Board), affirming the decision of the United States Postal Service (agency) to remove petitioner from the federal service because of misconduct, is affirmed.

OPINION

Petitioner's removal from his position as a P-5 Letter Carrier at the Austin Station, Chicago, Illinois, resulted from an investigation by the Postal Inspection Service, which found that he had failed to perform his duties in a satisfactory manner by his willful delay of delivery of a postal patron's mail. The investigation was made on the basis of a postal patron's complaint that her regular mail carrier (petitioner) had refused to deliver a monthly medical assistance card issued by the Illinois Department of Public Aid. The patron stated that she needed the card, which was good only for the month issued, because her 6-year-old son had cerebral palsy and required frequent medical attention. The patron complained that she had had no problems with the delivery of her medical card until September 1984, when she had refused petitioner's several requests that

she see him socially and accompany him on a weekend pleasure trip.

The investigation revealed that petitioner had purposely delayed delivery of the patron's medical assistance cards for the months of November and December 1984, and January 1985. On several occasions, petitioner deposited the envelope in a locked check box for undeliverable mail before leaving the station without attempting to deliver the cards. On other occasions, petitioner misfiled the letter to thwart any attempts by a substitute or fill-in carrier to properly and timely deliver it.

Petitioner claimed that it was against postal procedures to leave valuable mail such as Illinois medical assistance cards in unlocked or unsafe mailboxes. He also asserted that the mailbox in this patron's building was unsecured, and that when he was unable to personally deliver it to her, he would wait to

attempt delivery the next day. However, the investigation found that petitioner's claims were inconsistent with his actions. At several locations, he left mail (including medical assistance cards) in unlocked mailboxes and in unlocked vestibules of apartment buildings. In one case, petitioner left mail on the floor of the common area of a building. Other medical cards addressed to persons in the same building where the complaining patron lived had been delivered, while petitioner continued purposely to delay delivery of her medical cards.

In sustaining the removal action, the presiding official found persuasive the patron's claim that petitioner was retaliating against her because she had refused to see him socially, especially since petitioner's subsequent actions were consistent with the patron's claim. The presiding official also determined that the agency had shown a nexus between petitioner's misconduct and the efficiency of the service, in view of

petitioner's fiduciary duty to deliver the mail and the station manager's testimony that he could no longer trust petitioner to deliver important mail. Finally, the presiding official found that no mitigating factors overcame the serious nature of petitioner's misconduct, which was aggravated by its repeated nature and the fact that the card was vital for the medical treatment of a child suffering from cerebral palsy. Petitioner failed to show that his removal was an abuse of discretion.

Petitioner argues that the MSPB decision is not supported by substantial evidence, because it was based on the investigative memorandum and exhibits of the postal inspector, which are hearsay and cannot serve as the basis for substantial evidence. The contention is without merit. "It has long been settled that (hearsay) may be used in (MSPB) proceedings and may be treated as substantial evidence, even without corroboration, if, to a reasonable mind, the circumstances are such as to

lend it credence." Hayes v. Department of the Navy, 727 F.2d 1535, 1538 (Fed. Cir. 1984). See also Martel v. Department of Transportation, FAA, 735 F.2d 504 (Fed. Cir. 1985). The agency's decision was not based solely on the investigative memorandum; it was supported by the direct testimony of the chief investigator and petitioner's station manager. Accordingly, we conclude that the findings of the presiding official are supported by substantial evidence.

We have considered the remainder of petitioner's contentions and conclude that, in each instance, petitioner essentially attacks credibility determinations made by the presiding official. We reject these contentions, since we have repeatedly held that the court will not overturn a presiding official's determinations of credibility, absent convincing reasons to do so. DeSarno v. Department of Commerce, 761 F.2d 657, 661 (Fed. Cir. 1985); Griessenauer vs. Department of Energy, 754 F.2d 361, 364 (Fed. Cir. 1985).

United States Court of Appeals for the Federal Circuit

JAMES JACKSON,	)	
	)	
Petitioner,	)	Appeal No. 86-598
	)	
v.	)	MSPB Docket No.
	)	CH07528510344
UNITED STATES POSTAL SERVICE,	)	
	)	
Respondent.	)	

Judgment

ON APPEAL from the Merit Systems Protection Board

in CASE NO(S). CH07528510344

This CAUSE having been heard and considered, it is

ORDERED and ADJUDGED: AFFIRMED.

ENTERED BY ORDER OF THE COURT

DATED: May 19, 1986

Francis X. Gindhart, Clerk

ISSUED AS A MANDATE: June 9, 1986
COSTS: Against, Petitioner
PRINTING----------$102.88
TOTAL----------$102.88